



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1994

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR94-860

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28467.

The Travis County District Attorney's Office (the "district attorney") has received a request for certain investigation materials relating to an accident involving a motor boat and a jet ski. Specifically, the requestor seeks a copy of district attorney's file number 94-8026, including photographs, video tapes, witness statements, the driving and boating history of the defendant, diagrams, and field notes. You have submitted the requested information to us for review and claim that sections 552.101, 552.103, 552.108, and 552.111 of the Government Code except it from required public disclosure.

First, we address your contention that section 552.101 of the Government Code excepts some of the requested information from required public disclosure. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that section 552.101 in conjunction with state and federal laws protecting criminal history record information ("CHRI") excepts exhibits A, B, C, and D from required public disclosure. Title 28, part 20 of the Code of Federal Regulations prohibits the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). These regulations also allow each state to follow its individual law with respect to CHRI the state generates. *Id.*; see also Gov't Code § 411.084 (prohibiting release of CHRI obtained from Department of Public Safety).

We have examined exhibits A, B, C, and D. These exhibits appear to include CHRI generated by the National Crime Information Center ("NCIC"), the Texas Crime Information Center ("TCIC"), and other sources. Exceptions to confidentiality provided for in state and federal law do not appear to apply in this instance. We note, however, that some of the submitted information, which we have marked for your convenience, does not constitute CHRI. See Gov't Code § 411.082(2)(B) (excluding from definition of CHRI identification information and certain driving record information). Accordingly, the district attorney may not withhold the marked information from required public disclosure under section 552.101 of the Government Code. The district attorney, however, must withhold the remainder of exhibits A, B, C, and D under section 552.101.

Next, we address your assertion that section 552.108 of the Government Code excepts some of the requested information from required public disclosure. Specifically, you claim that section 552.108 excepts exhibits E and F from disclosure. Section 552.108 excepts from required public disclosure

[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . [and]

[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2.

You advise us that the information contained in exhibits E and F relates to pending criminal investigations. We conclude, therefore, that the district attorney may withhold these exhibits under section 552.108 of the Government Code, except to the extent that they include first-page offense report information. As we resolve this matter under sections 552.101 and 552.108 of the Government Code, we need not address the applicability of sections 552.103 and 552.111 at this time.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive, flowing style.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Ref.: ID# 28467

Enclosures: Submitted documents

cc: Ms. Thelma M. Alvarado-Garza
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(w/o enclosures)